IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

RCRev..No. 357 of 2007
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RCA.95/2004 of DISTRICT COURT, THALASSERY
RCP.175/2002 of PRL.M.C.,KANNUR
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REVISION PETITIONER/APPELLANT/RESPONDENT:

PANNYAN VIJAYAN, S/O GOVINDAN,
AGED 56 YEARS, BUSINESS HOTEL
GANESH, KANNUR-1 AMSOM, THALIKAVU
DESOM, RESIDING AT ELAYAVOOR AMSOM,
KIZHUTHALLY DESOM, KANNUR.

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.KAUSER EDAPPAGATH

RESPONDENT/RESPONDENT/PETITIONER:

PULIMARATHIL KEEZHIL SAHIDA,
D/O MUSTAFA, AGED 45 YEARS,
HOUSE WIFE, RESIDING AT MUZHATHADAM,
KANNUR 1 AMSOM, MUZHATHADOM DESOM,
KANNUR-12.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

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R.C.R.No. 357 of 2007

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**ORDER**

Balakrishnan Nair, J.

The revision petitioner is the tenant. The respondent is the landlady. The Rent Control Petition was filed by the landlord under Section 11 (2)(b) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). Both the authorities below concurrently allowed eviction under the said ground.

2. The dispute raised by the tenant only relates to the rate of rent fixed for the period commencing from 1.1.2001. The rent deed executed is Exhibit A1 dated 10.1.1990. It contained a clause that the monthly rent has to be enhanced by 5%, initially on completion of five years and thereafter to enhance the rent by 20% on completion of three years. As per the stipulation in the rent

deed, the rent was enhanced to Rs.1,150/- p.m. with effect from 1.1.1995 and thereafter to Rs.1,380/- per month from 1.1.1998. But, when the rent was enhanced to Rs.1,656/- per month with effect from 1.1.2001, the tenant objected. Since the rent was not paid at the rate stipulated, Exhibit A2 notice was issued. The tenant did not respond to it. Therefore, the Rent Control Petition was filed. As mentioned earlier, both the authorities below concurrently held that the tenant is liable to pay rent at the rate of Rs.1,656/- per month with effect from 1.1.2001.

3. The learned counsel for the revision petitioner firstly contended that the rent deed, being an unregistered document, the courts below should not have acted upon it. But, we notice that the said point was neither raised before the Rent Controller nor before the appellate authority. Therefore, we are not inclined to consider the said point raised for the first time before this Court.

Secondly, it was contended that enhancement of rent at the rate of 20% was only meant for the initial period of three years. But, the conduct of the parties will belie the said contention. The rent was enhanced as per the rent deed in 1995 and 1998. The revision petitioner objected to it only for the first time when the rent was enhanced by 20% with effect from 1.1.2001. Further, this claim was specifically raised by the landlady in Exhibit A2 notice. But, as noticed by us earlier, the tenant did not send any reply to the notice, disputing the rate of rent. The dispute was raised for the first time, when the counter statement was filed in the Rent Control petition. The appellate authority noticed that the said conduct of the tenant lends credence to the case of the landlady and it also relied on the original of Exhibit A4 counter foil. The said counter foil would show that the tenant paid the revised rent on 20.11.2001. Relying on the above circumstances, the appellate authority

held that the tenant is liable to pay the rent at the rate of Rs.1,656/- per month from 1.1.2001. Admittedly, the rent is in arrears at the specified rate. Therefore, eviction was ordered under Section 11(2)(b) of the Act. We find that the above finding is a finding of fact, based on evidence and materials on record. We cannot describe the said finding as one based on no evidence or as perverse.

In the result, the revision fails and it is dismissed.

(K.Balakrishnan Nair, Judge)

5th December, 2007

(K.P.Balachandran, Judge)

tkv